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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,921	08/07/2001	Michael David Bell	CM2038	1887

27740 7590 12/06/2001

THE PROCTER & GAMBLE COMPANY
PATENT DIVISION
SHARON WOODS TECHNICAL CENTER
11511 REED HARTMAN HIGHWAY
CINCINNATI, OH 45241

EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/06/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,921

Applicant(s)

MICHAEL DAVID BELL

Examiner

Blessing M. Fubara

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

DETAILED ACTION

Examiner acknowledges receipt of preliminary amendment filed 09/07/01.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones et al. (WO 96/03967).

Jones discloses a cosmetic composition comprising a gelling agent and conditioning polymer (abstract and page 1, lines 3-7). The gelling agent comprises copolymer of methyl vinyl ether/maleic anhydride that is cross-linked with C₄-C₁₆ alkadiene (PVM/MA decadiene crosspolymer) (page 2, lines 26 to page 3 line 34). The composition further comprises hair fixative polymer that are cationic copolymer of hydroxyethyl cellulose and diallyl dimethyl ammonium chloride known as POLYQUATERNIUM 4 (page 2, lines 30-32 and page 5, lines 24-35). The composition also contains carrier selected from C₁-C₆ alkanols, carbitol, acetone and mixtures thereof (page 5, lines 11-15). Cationic and non-ionic resins, and any polymer, cationic or non-ionic, having molecular weight in the range from about 1,000 to 5,000,000, and which is soluble or colloidally dispersible in the cosmetic carrier may be utilized as the hair fixative polymer (page 6, lines 8-33 and page 7). Cationic polysaccharides, guar gum and homopolymers and copolymers derived from acrylic acid and/or methacrylic acid are examples of polycationic polymer resins utilized in the composition (page 7, lines 32 to page 8 line 3).

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The composition comprises from about 0.1% to about 10% by weight of hair fixative polymer (page 2, lines 31-33). The composition of Jones can be formulated as leave-in hair cosmetic compositions such as gels or creams (page 8, lines 11-14). The composition optionally contains preservatives, surfactants, block copolymers, thickeners and viscosity modifiers (page 8, lines 26-35). See also claims 1-12.

The invention is directed to a cosmetic composition comprising i) a polymeric thickening agent selected from non-ionic and anionic thickening agents or mixtures thereof, having average molecular weight greater than 20,000 and ii) a cation containing polymer, or mixtures thereof where the composition comprises less than 4% of an anionic, zwitterionic or amphoteric surfactant. The surfactant in the composition of the instant invention is less than 4% and 0% is less than 4%.

The prior art teaches optional surfactant and anionic, zwitterionic or amphoteric surfactant is encompassed in the generic disclosure of surfactant. It may be noted that the polymeric materials taught in the prior art are the polymeric materials taught in the invention. Thus Jones meets the limitation of the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. (WO 96/03967).

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The teaching of Jones is discussed above. However, the amount of the polymeric thickener or hair fixative polymer (from about 0.1% to about 10%) taught in the prior art lies within the range taught in the invention (from about 0.01% to about 20%). And in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists, *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Jones. One having ordinary skill in the art would have been motivated to prepare the composition of Jones as a leave-in gel or cream composition.

5. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374.

The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
December 3, 2001

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600